

**From:** [O'Hara, Shelley M. \(EOIR\)](#)  
**To:** [Lee-Sullivan, Marcia L. \(EOIR\)](#)  
**Cc:** [Schaaf, Joseph R. \(EOIR\)](#); [Souza, Crystal \(EOIR\)](#)  
**Subject:** 2018-40237 FOIA request - search request  
**Date:** Tuesday, August 14, 2018 10:24:51 AM  
**Attachments:** [2018-40237 \(Electronic Mail Messages\).pdf](#)

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Good Morning:

We received a FOIA request from Matthew Hoppock through MuckRock for the following records:

- **[OCIJ]** Emails messages from **Principal DCIJ Santoro** having the follow key words/terms in the **subject line** or **body**:
  - Pereira
  - Perera
  - Peirera
  - NTA
  - NTAs
  - Notice to Appear
  - Notices to Appear

The search timeframe is from **June 21, 2018** through **July 12, 2018**.

Please note that when conducting a search, the term record is any information that would be maintained or in the possession of an agency in any format, including electronic records (i.e., documents, e-mails, recordings, computer information, etc.).

In order for us to meet our extended statutory deadline of 30 days to respond to this request indicating that a search has been conducted, please send all materials to me within 10 calendar days, if possible. If you cannot meet the deadline, please contact me to apply for an extension.

Thank you for your cooperation.

Sincerely,

Shelley M. O'Hara  
Attorney Advisor (FOIA)  
Office of the General Counsel  
Executive Office for Immigration Review  
Department of Justice  
5107 Leesburg Pike, Suite 2600  
Falls Church, VA 22041  
(703) 605-0275

**From:** [Schaaf, Joseph R. \(EOIR\)](#)  
**To:** [O'Hara, Shelley M. \(EOIR\)](#)  
**Subject:** FW: 2018-40237 (Electronic Mail Messages)  
**Date:** Wednesday, July 18, 2018 5:06:18 PM

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[More Pereira.](#)

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**From:** Phung, Mai (EOIR)  
**Sent:** Monday, July 16, 2018 9:47 AM  
**To:** Schaaf, Joseph R. (EOIR) <Joseph.Schaaf@EOIR.USDOJ.GOV>  
**Cc:** Souza, Crystal (EOIR) <Crystal.Souza@EOIR.USDOJ.GOV>  
**Subject:** 2018-40237 (Electronic Mail Messages)

**From:** 58081-87991590@requests.muckrock.com <58081-87991590@requests.muckrock.com>  
**Sent:** Thursday, July 12, 2018 4:43 PM  
**To:** FOIARequests, EOIR (EOIR) <EOIR.FOIARequests@EOIR.USDOJ.GOV>  
**Subject:** Freedom of Information Act Request: E-mail Messages to AllofOCIJHDQandCourts@EOIR.USDOJ.gov re Pereira

Department of Justice, Executive Office for Immigration Review  
FOIA Office  
Suite 1903  
5107 Leesburg Pike  
Falls Church, VA 20530

July 12, 2018

To Whom It May Concern:

Pursuant to the Freedom of Information Act, I hereby request the following records:

1. All e-mail messages sent to or from the e-mail address "[AllofOCIJHDQandCourts@EOIR.USDOJ.gov](mailto:AllofOCIJHDQandCourts@EOIR.USDOJ.gov)" between the dates of June 21, 2018 and the date this request is processed containing any of the following keywords:  
"Pereira"  
"Perera"  
"Peirera"  
"NTA"  
"NTAs"  
"Notice to Appear"  
"Notices to Appear"

The search should include records where the above-listed e-mail address was included in any of the "To," "From," "CC," or "BCC" fields.

2. All e-mail messages to or from EOIR employee Christopher A. Santoro between the dates of June 21, 2018 and the date this request is processed containing any of the following keywords:

"Pereira"

"Perera"

"Peirera"

"NTA"

"NTAs"

"Notice to Appear"

"Notices to Appear"

The search should include records where the above-listed e-mail address was included in any of the "To," "From," "CC," or "BCC" fields.

3. In addition to the records requested above, I also request records describing the processing of this request, including records sufficient to identify search terms used and locations and custodians searched and any tracking sheets used to track the processing of this request. If you use FOIA questionnaires or certifications completed by individual custodians or components to determine whether they possess responsive materials or to describe how they conducted searches, I also request any such records prepared in connection with the processing of this request.

To clarify my request, I seek all responsive records regardless of format, medium, or physical characteristics. In conducting the search, please understand the terms "record," "document," and "information" in their broadest sense, to include any written, typed, recorded, graphic, printed, or audio material of any kind. We seek records of any kind, including electronic records, audiotapes, videotapes, and photographs, as well as letters, emails, facsimiles, telephone messages, voice mail messages and transcripts, notes, or minutes of any meetings, telephone conversations or discussions. My request includes any attachments to these records, including e-mail attachments. No category of material should be omitted from search, collection, and production.

Please search all records regarding agency business. You may not exclude searches of files or emails in the personal custody of your officials, such as personal email accounts. Records of official business conducted using unofficial systems or stored outside of official files is subject to the Federal Records Act and FOIA. See *Competitive Enter. Inst. v. Office of Sci. & Tech. Policy*, 827 F.3d 145, 149–50 (D.C. Cir. 2016); cf. *Judicial Watch, Inc. v. Kerry*, 844 F.3d 952, 955–56 (D.C. Cir. 2016).

It is not adequate to rely on policies and procedures that require officials to move such information to official systems within a certain period of time; I exercise and specifically preserve and assert my right to records contained in those files even if material has not yet been moved to official systems or if officials have, through negligence or willfulness, failed to meet their obligations. See *Competitive Enter. Inst. v. Office of Sci. & Tech. Policy*, No. 14-cv-765, slip op. at 8 (D.D.C. Dec. 12, 2016).

In addition, please note that in conducting a "reasonable search" as required by law, you must employ the most up-to-date technologies and tools available, in addition to searches by individual custodians likely to have responsive information. Recent technology may have rendered DHS's prior FOIA practices unreasonable. In light of the government-wide requirements to manage information electronically by the end of 2016, it is no longer

reasonable to rely exclusively on custodian-driven searches. Presidential Memorandum—Managing Government Records, 76 Fed. Reg. 75,423 (Nov. 28, 2011), <https://obamawhitehouse.archives.gov/the-press-office/2011/11/28/presidentialmemorandum-managing-government-records>; Office of Mgmt. & Budget, Exec. Office of the President, Memorandum for the Heads of Executive Departments & Independent Agencies, “Managing Government Records Directive,” M-12-18 (Aug. 24, 2012), <https://www.archives.gov/files/records-mgmt/m-12-18.pdf>.

Furthermore, agencies that have adopted the National Archives and Records Agency (NARA) Capstone program, or similar policies, now maintain emails in a form that is reasonably likely to be more complete than individual custodians’ files. For example, a custodian may have deleted a responsive email from his or her email program, but DHS’s archiving tools would capture that email under Capstone. Accordingly, I insist that the USCIS use the most up-to-date technologies to search for responsive information and take steps to ensure that the most complete repositories of information are searched. I am available to work with you to craft appropriate search terms.

If it is your position that any portion of the requested records is exempt from disclosure, I request that you provide an index of those documents as required under *Vaughn v. Rosen*, 484 F.2d 820 (D.C. Cir. 1973), cert. denied, 415 U.S. 977 (1974). The index must describe each document claimed as exempt with sufficient specificity “to permit a reasoned judgment as to whether the material is actually exempt under FOIA.” *Founding Church of Scientology v. Bell*, 603 F.2d 945, 949 (D.C. Cir. 1979). Moreover, the index “must describe each document or portion thereof withheld, and for each withholding it must discuss the consequences of disclosing the sought-after information.” *King v. U.S. Dep’t of Justice*, 830 F.2d 210, 223–24 (D.C. Cir. 1987). Further, “the withholding agency must supply ‘a relatively detailed justification, specifically identifying the reasons why a particular exemption is relevant and correlating those claims with the particular part of a withheld document to which they apply.’” *Id.* at 224 (citing *Mead Data Central, Inc. v. U.S. Dep’t of the Air Force*, 566 F.2d 242, 251 (D.C. Cir. 1977)).

In the event some portions of the requested records are properly exempt from disclosure, please disclose any reasonably segregable non-exempt portions of the requested records. If it is your position that a record contains non-exempt segments, but that those non-exempt segments are so dispersed throughout the document as to make segregation impossible, please state what portion of the document is non-exempt, and how the material is dispersed throughout the document. *Mead Data Central*, 566 F.2d at 261. Claims of nonsegregability must be made with the same degree of detail as required for claims of exemptions in a *Vaughn* index. If a request is denied in whole, please state specifically that it is not reasonable to segregate portions of the record for release.

You should institute a preservation hold on information responsive to this request. I intend to pursue all legal avenues to enforce my right of access under the FOIA, including prompt litigation if that becomes necessary. Accordingly, the USCIS is on notice that litigation is reasonably foreseeable. To ensure that this request is properly construed, that searches are conducted in an adequate but efficient manner, and that extraneous costs are not incurred, I welcome an opportunity to discuss this request with you before you undertake your search or incur search or duplication costs. By working together at the outset, we can decrease the likelihood of costly and time-consuming litigation in the future. If it will accelerate release of responsive records to me, please also provide responsive material on a rolling basis.

#### Fee Waiver Request:

In accordance with 5 U.S.C. § 552(a)(4)(A)(iii) and 6 C.F.R. § 5.11(k), I request a waiver of fees associated with processing this request for records. The subject of this request concerns the operations of the federal government, and the disclosures will likely contribute to a better understanding of relevant government procedures by the general public in a significant way. 6 C.F.R. § 5.11(k)(1)(i).

Moreover, the request is entirely and fundamentally for non-commercial purposes. 6 C.F.R. § 5.11(k)(1)(ii).

I request a waiver of fees because disclosure of the requested information is “in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government.” 6 C.F.R. § 5.11(k)(1)(i); see also 6 C.F.R. § 5.11(k)(2)(i)-(iv). Since the issuance of the Supreme Court's decision in *Pereira v. Sessions*, the question of whether immigration court charging documents must comply with the statute has become one of especially heightened importance. Immigration Courts were directed by the Supreme Court that a charging document missing necessary information about the date and time of the hearing “is not a Notice to Appear.” It is our understanding that guidance was issued directing Immigration Courts to stop accepting for filing charging documents filed by the Department of Homeland Security that did not comply with INA 239. However, in an immigration court filing on July 12, 2018 a DHS employee included a July 11, 2018 e-mail from EOIR employee Christopher A. Santoro to the [AllofOCIJHDQandCourts@EOIR.USDOJ.gov](mailto:AllofOCIJHDQandCourts@EOIR.USDOJ.gov) address directing all court staff to again begin accepting non-compliant Notices to Appear for filing. This appears to be a basic violation of the immigration statute and the clear command of the Supreme Court. Also, the EOIR traditionally releases its guidance for court staff in the form of Operating Policies and Procedures Memoranda (“OPPM”), which are public documents, so that the general public, including respondents in removal proceedings, can be aware of the court's practice. Secret guidance directing court staff to violate the immigration statute and a clear command of the Supreme Court is an issue of heightened importance and the public has a right to know about it.

I am also a member of the news media and have written and researched immigration court practice and procedures, including specifically developments in docketing procedures since the change in administration,, and I request that all search and production fees be waived due to my news media status. See e.g. <https://www.law360.com/articles/1050952/foia-documents-shed-light-on-eoir-case-management> (referencing my writing and research on docketing procedure changes); <https://www.aila.org/infonet/eoir-foia-response-no-dark-courtrooms-policy> (same); [https://www.washingtonpost.com/world/national-security/scanning-immigrants-old-fingerprints-us-threatens-to-strip-thousands-of-citizenship/2018/06/13/2230d8a2-6f2e-11e8-afd5-778aca903bbe\\_story.html?utm\\_term=.c59c400f0ef7](https://www.washingtonpost.com/world/national-security/scanning-immigrants-old-fingerprints-us-threatens-to-strip-thousands-of-citizenship/2018/06/13/2230d8a2-6f2e-11e8-afd5-778aca903bbe_story.html?utm_term=.c59c400f0ef7) (referencing my research and writing on denaturalization procedures); <https://www.thetimes.co.uk/article/us-may-strip-citizenship-cheats-of-their-passports-lwt7kdddq0> (same); <http://www.recorder.com/US-goes-after-naturalized-immigrants-with-criminal-records-18780878> (same). I am quoted in a number of the articles listed above and intend to use the documents and information received in response to this request to share with the public and to write related news articles about immigration enforcement efforts.

#### Expedite Request:

Pursuant to 6 CFR § 5.5(e)(1) I am requesting the processing and production of records in response to this request be expedited. In particular, the direction that court staff accept for filing “NTAs” which the Supreme Court has explicitly stated are not notices to appear because

they don't comply with the statute is an urgent matter that should be reported on broadly. The loss of substantial due process rights cannot be overstated for immigrants who have not received complete notice they are being placed into deportation proceedings. Finally, as outlined above, this is a matter of "widespread and exceptional media interest in which there exist possible questions about the government's integrity which affect public confidence." For all such reasons, the USCIS should expedite its request and produce the requested records at once.

The requested documents will be made available to the general public, and this request is not being made for commercial purposes.

In the event that there are fees, I would be grateful if you would inform me of the total charges in advance of fulfilling my request. I would prefer the request filled electronically, by e-mail attachment if available or CD-ROM if not.

Thank you in advance for your anticipated cooperation in this matter. I look forward to receiving your response to this request within 20 business days, as the statute requires.

Sincerely,

Matthew Hoppock

Filed via MuckRock.com

E-mail (Preferred): [58081-87991590@requests.muckrock.com](mailto:58081-87991590@requests.muckrock.com)

Upload documents directly: [https://www.muckrock.com/accounts/agency\\_login/department-justice-executive-office-immigration-review-4122/e-mail-messages-to-allofocijhdqandcourtseoirusdojgov-re-pereira-58081/?email=EOIR.FOIARequests%40usdoj.gov&uuid-login=9a50dd25-d33d-446e-94c3-de8a0b474091#agency-reply](https://www.muckrock.com/accounts/agency_login/department-justice-executive-office-immigration-review-4122/e-mail-messages-to-allofocijhdqandcourtseoirusdojgov-re-pereira-58081/?email=EOIR.FOIARequests%40usdoj.gov&uuid-login=9a50dd25-d33d-446e-94c3-de8a0b474091#agency-reply)

Is this email coming to the wrong contact? Something else wrong? Use the above link to let us know.

For mailed responses, please address (see note):

MuckRock News

DEPT MR 58081

411A Highland Ave

Somerville, MA 02144-2516

PLEASE NOTE: This request is not filed by a MuckRock staff member, but is being sent through MuckRock by the above in order to better track, share, and manage public records requests. Also note that improperly addressed (i.e., with the requester's name rather than "MuckRock News" and the department number) requests might be returned as undeliverable.